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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Human Resources
Division:	
Contact Person:	Danielle Whitworth Barnes
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Danielle Whitworth Barnes
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Human Resources
Address 2:	505 Deaderick Street, 1 st Floor, J.K. Polk Building
City:	Nashville, Tennessee
Zip:	37243
Hearing Date :	Tuesday, June 19, 2012
Hearing Time:	9:00 a.m. – 11:00 a.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- ☒ Amendment
☒ New
☒ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

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SS-7037 (October 2011)

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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-01
DEFINITIONS

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1120-01-.01 Definitions

1120-1-.01 DEFINITIONS. The following definitions shall apply to terms as they appear in these Rules, unless the context clearly requires otherwise:

- (1) Act. Tennessee Excellence, Accountability, and Management ["T.E.A.M."] Act as codified in Tennessee Code Annotated.
- (2) Active Pay Status. Term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank leave.
- (3) Affirmative Action Plan. A statistical document which identifies and analyzes patterns in the participation and utilization of women and minorities in the workforce.
- (4) Agency. Any entity that employs and exercises authority over any employee in state service in the executive branch.
- (5) Appeal. A written complaint by a preferred employee concerning a disciplinary dismissal, demotion or suspension or by a state agency concerning the Commissioner's Step II decision.
- (6) Applicant Assessment. An assessment designed to determine the qualifications, fitness, and ability of the applicant to perform the duties of the class of positions for which the applicant has applied. The assessment may consist of a written, oral, or physical exam, or a demonstration of skills, or any combination of such types. The assessment may also consist of an evaluation of education, experience, skill, ability, competency, knowledge, aptitude, capacity, character, and other qualifications as, in the judgment of the Commissioner, may determine and measure the relative ability of the applicant.
- (7) Appointing Authority. An officer having power to make appointments to and separations from positions in state service.
- (8) Appointment. The official designation of a person to fill a position in state service as an employee.
- (9) Board. The Board of Appeals as established in T.C.A. § 8-30-108.
- (10) Classification/Class of Positions. A group of positions sufficiently alike in duties, authority and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.
- (11) Classification Specification. A description of a class of positions including classification title, summary, distinguishing features, examples of duties and responsibilities, minimum qualifications, necessary special qualifications, and assessment method.
- (12) Clerical Staffing Service. The utilization of a temporary staffing service vendor having a contract with the State to provide short-term temporaries to perform the duties, for a period not to exceed ninety (90) days, of an existing preferred service position.
- (13) Commissioner. The Commissioner of the Department of Human Resources.

- (14) Compensation Plan. A series of salary ranges to which classes of positions are assigned so that classifications evaluated as substantially equal are assigned to the same salary range.
- (15) Demotion. The change of an employee to a position in a classification at a lower salary grade for causes related to performance of duties or conduct which affects an employee's ability to successfully fulfill the requirements of the job.
- (16) Department. The Department of Human Resources.
- (17) Dismissal. The termination from state service of an employee for causes related to performance of duties or conduct which may affect an employee's ability to successfully fulfill the requirements of the job.
- (18) Eligible. A person who has qualified for appointment to a position in the preferred service.
- (19) Eligible List. A list of names of all qualified applicants for positions in the preferred service.
- (20) Emergency Appointment. The appointment of a person to a position for a period, not to exceed one hundred twenty (120) days, when an emergency occurs.
- (21) Executive Service. All positions in the state service not subject to the preferred service provisions of the Act.
- (22) Executive Service Employee. An employee who holds a position in the executive service. Executive Service employees serve at the pleasure of the Appointing Authority.
- (23) Flex-Class Position. A position in a job classification series which may be filled with an employee qualified to perform the job at the trainee, intermediate or working level.
- (24) Full-Time. A position or an employee budgeted for or scheduled to work a full-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually one thousand nine hundred and fifty (1,950) hours or more per year.
- (25) Gross Misconduct. Any job related misconduct which may subject an employee to criminal prosecution.
- (26) Initial Probation/Initial Probationary Period. The probationary period an employee serves in an agency in a continuous period of employment prior to becoming a preferred employee in that agency.
- (27) Interim Appointment. The appointment of a person to a position for a period of one (1) year.
- (28) Involuntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade as a result of a reduction in force or in compliance with T.C.A. § 8-30-312.
- (29) Lateral Reclassification. A change from a position in one classification to a position in another classification with the same salary grade and similar duties, authority, responsibilities, and qualification requirements.
- (30) Layoff. A separation of an employee from state service as the result of a reduction in force.
- (31) Legal Residence. The county in which an individual's home is located and to which the individual plans to return if temporarily absent.
- (32) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited executive service appointments. Limited term appointments do not require the use of eligible lists.
- (33) List. A compilation of eligibles who may be appointed to positions in accordance with these Rules, such as appointment list, promotion list or layoff list.
- (34) Major Portion of a Month. One-tenth (0.1) of one (1) hour over fifty percent (50%) of the regularly scheduled working hours.

- (35) **Manager.** An employee who supervises, plans and coordinates the work of other supervisors or an employee who serves in a staff policy making or recommending capacity in an agency. Managers may conduct and/or review performance evaluations.
- (36) **Non-Preferred Employee.** Employees who fall outside the provisions of the Act and serve in one of the following appointment types: interim, emergency, part-time, seasonal, temporary, or temporary employment of retired state employees. Employees in this category do not become preferred service employees.
- (37) **Official Duty Station.** The town or city where the majority of the employee's duties are performed.
- (38) **Organizational or Business Unit.** Any agency, board, commission, department, or subdivision recognized as a unit for purposes of administration.
- (39) **Part-Time.** A position or an employee budgeted or scheduled to work a part-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually less than sixteen hundred (1,600) hours per year.
- (40) **Position.** A job consisting of assigned duties, authority, and responsibilities typically performed by one (1) person.
- (41) **Position Reclassification.** A change in a job classification, typically resulting from a significant reassignment in job duties and responsibilities.
- (42) **Preferred Service Employee.** An employee who holds a position in an agency in state service in which the employee has completed the requisite probationary period.
- (43) **Preferred Service.** All positions in state service subject to the provisions of the Act.
- (44) **Probationary Period.** A period of at least twelve (12) months duration used to provide an employee with the opportunity to demonstrate ability to adequately perform the duties of the job.
- (45) **Promotion.** The change of an employee to a position in a classification at a higher salary grade.
- (46) **Reallocation/Reallocated.** A change from one classification to a new or existing classification based on a change in the nature or structure of the classification plan.
- (47) **Reduction in Force.** Any job action due to a lack of funds, a reduction in spending authorization, lack of work, efficiency or other material change in duties or organization that may result in the layoff of a preferred employee.
- (48) **Referred List.** The document or record containing the names of the applicants meeting minimum qualifications for a class of positions for consideration by an Appointing Authority in filling a vacancy.
- (49) **Regular Appointment.** The appointment of a person to a regular position in either the preferred or executive service for an indeterminate period of time.
- (50) **Regular Position.** A position which is funded on an annual basis and is expected to continue to receive funding.
- (51) **Salary Grade.** A numeric/alpha value which defines the level of the job classification and designates the salary range for a class of positions.
- (52) **Salary Range.** The minimum to the maximum rates of pay established for a class of positions.
- (53) **Seasonal Appointment.** A part-time appointment of a person for an indeterminate period of time to be scheduled to work for a certain period usually recurring each year and generally not exceeding sixteen hundred (1,600) hours per year.

- (54) Seasonal Position. A part-time position which is funded for a specific period of time, typically less than one (1) year, and is expected to continue to receive funding. These employees are considered to be non-preferred employees.
- (55) Sick Leave Bank. A pool of sick leave hours donated by member employees for use by qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine.
- (56) State. The State of Tennessee.
- (57) State Employee. A person employed in a position in state government. For the purposes of these Rules only, "state employee" excludes employees of state universities and local education agencies.
- (58) State Service. All officers and positions of trust or employment in the executive branch and all boards, commissions and agencies in state government except those specifically excluded by the Act.
- (59) Supervisor. An employee who oversees, directs, or manages the work, work flow, or employees in the performance of their daily duties. A supervisor shall be physically present in Tennessee while supervising employees working within Tennessee unless business reasons require out-of-state travel.
- (60) Suspension. An enforced leave of absence without pay for disciplinary purposes or pending an investigation or adjudication of charges made against an employee.
- (61) Temporary Appointment. The appointment of a person to a preferred service position for a temporary period until an appropriate list has been established, not to exceed six (6) months.
- (62) Terminal Leave. The annual leave balance of a retiring employee. Any leave balance remaining after the employee's last actual workday is considered terminal leave.
- (63) Termination. Any action taken that officially separates an employee from state service. This includes employees who elect to resign, retire or who are dismissed from state service.
- (64) Time Period. Time period for most employees is defined as the work week beginning on Sunday and ending Saturday.
- (65) Transfer. A change from one position in a classification to another position in the same classification.
- (66) Voluntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade based on an employee's request and the concurrence of the Appointing Authority.
- (67) Workday. A scheduled day of work exclusive of holidays or other authorized leave days.

Authority: T.C.A. § 8-30-101 *et seq.*

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-02
EMPLOYMENT PRACTICES

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1120-02-.01 RESPONSIBILITY. The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-107.

1120-02-.02 DIVISIONS OF STATE SERVICE. The state service is divided into the preferred service and the executive service.

Authority: T.C.A. § 8-30-201.

1120-02-.03 APPLICATION FOR EMPLOYMENT.

- (1) Applying for Positions in the Preferred Service. All applications for employment in preferred service positions must be made in a manner prescribed by the Commissioner.
- (2) Disqualification of Applicants. The Commissioner may reject the application of any person for admission to an assessment or may strike the name of a person from the list, if the Department determines that the applicant:
 - (a) is found to lack any of the required minimum qualification requirements established for the position;
 - (b) has previously been dismissed from state service for cause or gross misconduct;
 - (c) has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects eligibility for employment consideration;
 - (d) has committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to state service;
 - (e) has used or attempted to use political pressure or bribery to secure an advantage in assessment or appointment;
 - (f) has directly or indirectly obtained information regarding an assessment to which the applicant was not entitled;
 - (g) has failed to submit an application correctly or within the prescribed time limit;

- (h) has taken part in the compilation, administration, or correction of the assessment; or
 - (i) has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.
- (3) Notice of Removal from Eligible List. An applicant who is removed from a list for any reason shall be notified as described in this chapter.
 - (4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this section shall be in strict compliance with all applicable state and federal civil rights laws.
- Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-301, T.C.A. § 8-30-303, T.C.A. § 8-30-304, and T.C.A. § 8-30-305.

1120-02-.04 ASSESSMENTS.

- (1) Notice of Assessments. The Commissioner will give public notice of all assessments, at least one (1) week in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of assessments will specify the title and minimum salary for the position, the minimum or preferred qualifications required, the final date on which applications will be received, and other conditions of assessment necessary for the position.
- (2) Admission to Assessments. Assessments will be open to all persons who meet the requirements specified in the respective public notices. Each applicant admitted to an assessment will be notified of the time, date and place of the assessment. The Commissioner may request additional documentation from the applicant.
- (3) Employees in Positions Added to the Preferred Service. If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given an assessment in a manner prescribed by the Commissioner.
- (4) Conducting Assessments. All assessments will be approved by the Commissioner with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Assessments will be conducted in locations that are practical for proper administration. All applicants admitted to sit for an assessment must adhere to the Department's established testing rules and procedures. The Commissioner may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established Rules and procedures.
- (5) Evaluating Assessments. The Commissioner shall determine whether an applicant meets the minimum qualifications for the position. Applicants who meet the minimum qualifications will be approved for placement on eligible lists.
- (6) Applying for Written Assessment. Applicants may take a written assessment for a specific job classification in accordance with policy.
- (7) Determining Minimum Qualifications. The Commissioner will establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses, certifications, approved Continuing Education Units (CEU's), and other factors as deemed appropriate by the Commissioner.
- (8) Work Test Period. With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability. Such work test period shall not exceed one (1) year.
- (9) Investigations. The Commissioner or any Appointing Authority may investigate an applicant's education, credentials, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified

from future assessments. Lesser discrepancies in applicant information may result in a reevaluation of the assessment if necessary.

- (10) Oral Assessments. When an oral evaluation is part of the assessment method for a position or class of positions, the Commissioner will work with the Appointing Authority in establishing the specialized boards as needed.
- (11) Notice of Assessment Results. The Commissioner will notify each applicant in writing of the results of the assessment as soon as practicable. A manifest error in the assessment shall be corrected, if called to the attention of the Commissioner no later than one (1) month after the establishment of the list of eligibles. The correction, however, will not invalidate any appointment previously made from such list.
- (12) Rescheduling Assessments. When an applicant is unable to appear for a written assessment, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the written assessment at a later date.
- (13) Assessment Records. The Commissioner will maintain all records pertinent to an assessment program. The retention of applications and other necessary assessment records shall be maintained as prescribed by law.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-301, T.C.A. § 8-30-302, T.C.A. § 8-30-303, T.C.A. § 8-30-304, and T.C.A. § 10-7-504.

1120-02-.05 ELIGIBLE LIST.

- (1) Establishment of Eligible List. Upon request by the Appointing Authority, the Commissioner shall establish an eligible list for preferred service job classifications within a time prescribed by the Commissioner. The Commissioner shall establish and maintain lists of eligibles to meet the needs of the service.
- (2) Supplementing Eligible Lists. The Commissioner will routinely review existing employment eligible lists to determine whether there are an adequate number of eligibles available to meet the needs of the service. When the Commissioner determines that a particular eligible list is inadequate or is likely to become inadequate, the Commissioner may order a supplemental assessment for the class of positions. The public announcement for supplemental assessments will give notice of the dates when applications will be accepted and, where applicable, when written assessments will be administered.

Eligible lists for job classifications assessed on a continuous basis are supplemented daily as applicants are evaluated.

- (3) Duration of Eligible Lists. At the time a list of eligibles is established, the Commissioner shall determine the period during which such lists shall remain in force. Subject to the limitations of the Act and these Rules, the Commissioner may consolidate or cancel an eligible list at any time after it has been established.
- (4) Removal and Notification of Names from an Eligible List. Any applicant whose name is removed from an eligible list for any reason shall receive written notice of such action within ten (10) days of the date of removal.
 - (a) The name of an eligible may be removed or made inactive on an eligible list for a class of positions for any of the following:
 - (1) an eligible receives a regular appointment to a vacancy in that class of positions;
 - (2) the agency advises the Commissioner that the eligible is unwilling to accept appointment;
 - (3) an eligible declines an employment offer for the announced position;
 - (4) an eligible fails to respond within five (5) days of the date of an invitation to interview;
 - (5) an eligible cannot be located;

- (6) an eligible falsifies his legal residence;
- (7) An eligible has been convicted of a crime related to the position or class of positions for which he or she has applied; or
- (8) any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-305, and T.C.A. § 8-30-306.

1120-02-.06 CERTIFICATION AND USE OF ELIGIBLE LISTS.

- (1) Whenever an Appointing Authority proposes to fill a position in the preferred service, the authority shall submit to the Commissioner a statement showing the position to be filled, the duties for such position, the official station, the minimum qualification, and preferred skills, abilities, competencies and knowledge of the person to be appointed.
- (2) Certification of an Eligible List. The Commissioner shall certify an eligible list containing applicants meeting the minimum qualifications for the position to be filled by the requesting agency.
- (3) Referred List. Upon the request of the Appointing Authority, the Commissioner may establish employment, promotional, statewide, departmental, divisional, unit or any other list of eligibles deemed necessary or appropriate. The Commissioner shall issue a policy that agencies may use in establishing referred lists.
- (4) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the preferred service, the Appointing Authority may request a list to fill the position(s) in a manner prescribed by the Commissioner.
- (5) Methods of Certification. The Commissioner will certify to the Appointing Authority the names of eligibles from the appropriate referred list for the classification. When requesting a referred list for a flexibly staffed position, the Appointing Authority may request a referred list for the trainee, intermediate or working level classifications.
- (6) Interviewing Candidates from a Referred List. An Appointing Authority must offer an invitation to interview a to a minimum of three (3) applicants from the referred list of eligibles, if three (3) or more applicants are on the list. If less than three (3) applicants are on the list of eligibles, the Appointing Authority must invite each person on the list to interview.
- (7) When invitations to interview candidates are extended, whether for appointment or promotion, and the list contains eligible Veterans or Veteran spouses in compliance with T.C.A. 8-30-307, such persons shall be invited to interview.
- (8) Appointment from a Referred List. Within thirty (30) days after being referred a list of eligibles, the Appointing Authority shall appoint one (1) of the applicants on the list of eligibles.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-306, and T.C.A. § 8-30-307.

1120-02-.07 OTHER LISTS.

- (1) Layoff List. The Department shall maintain a list of all preferred service employees affected by a reduction in force for a period of one (1) year following the employee's date of layoff. Employees so listed shall be notified of any job openings in the same job classification that the employee served immediately prior to layoff, shall be extended an invitation to apply for the job, and shall be granted an interview by the hiring agency upon application.
- (2) Selective Certification. An individual position or group of positions in a classification may, under special circumstance, be placed into a sub-classification because the group requires unique or special qualifications. Requests for selective certification must be made in writing and approved by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-305, T.C.A. § 8-30-306 and T.C.A. § 8-30-314.

1120-02-.08 NON-COMPETITIVE CLASSIFICATIONS. For positions involving the basic clerical, unskilled or semi-skilled labor, or domestic attendant or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the provisions of the Act, the Commissioner may adopt, or authorize the use of, such other procedures as the Commissioner determines to be appropriate in order to meet the needs of the service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-311.

1120-02-.09 FILLING POSITIONS.

- (1) **Preferred Service Positions.** All preferred service positions are regular full-time positions which may be filled by persons who are among the available eligibles on a referred list.

Preferred service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary appointment, emergency appointment, or interim appointment. Preferred service positions may also be filled on a part-time basis with a seasonal appointment.

- (2) **Executive Service Positions.** Referred lists are not required to fill executive service positions. Executive service employees are at-will and serve at the pleasure of the Appointing Authority.
- (3) **Overlap.** An Appointing Authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.
- (4) **Job Sharing.** An Appointing Authority may place more than one (1) part-time employee in a single full-time position in a job sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing are considered to be non-preferred service.
- (5) **Mismatch.** An Appointing Authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.

For preferred service appointments, the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience or credentials. Preferred service mismatches should not exceed one (1) year except for employees in lower level flex classes with probationary periods longer than one (1) year.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, T.C.A. § 8-30-309.

1120-02-.10 APPOINTMENTS.

- (1) **Regular Appointment.** A regular appointment is an appointment to either a preferred, non-preferred or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and behavior by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment is at will and continues at the pleasure of the Appointing Authority.
- (2) **Emergency Appointment.** An emergency appointment is an appointment to a full-time preferred service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short term appointment. Emergency appointees must meet the minimum qualifications for the class of positions to which appointed. An emergency appointment may not be renewed and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of eligible lists. Time served in an

emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.

- (3) **Interim Appointment.** Based on written justification submitted by an Appointing Authority, the Commissioner may approve an interim appointment for a period not to exceed one (1) year. Based on written justification submitted by an Appointing Authority, the Commissioner may approve, up to a one (1) year extension, after determining that such an extension is in the best interest of the State.

To be eligible for an interim appointment, the employee must meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred list, the Appointing Authority may grant the employee a regular appointment in the position using the referred list from which the interim appointment was made.

- (4) **Seasonal Appointment.** Seasonal appointments do not require the use of eligible lists and are non-preferred.
- (5) **Temporary Appointment.** The appointment of a person to a preferred service position for a temporary period until an appropriate list has been established, not to exceed six (6) months.
- (6) **Limited Term Appointment.** The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited-term appointments pursuant to statute. Limited term appointments do not require the use of eligible lists.
- (7) **Temporary Employment of Retired State Employees.** Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days (900 hours for employees on a seven and a half (7.5) hour work day or 960 hours for employees on an eight (8) hour work day) during a twelve (12) month period.
- (8) **Appointments to Flex Class Positions.** To fill the vacancy of a flex class position, the Appointing Authority must request from the Commissioner a referred list of applicants for either one of the trainee level classifications or the working level class. Any eligible appointed to a flex class position from the referred list for either the trainee or working level class shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the Appointing Authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, become a preferred employee in the position in the working level classification without further assessment or certification. The employee must be removed from the position if the probationary period has not been successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, T.C.A. §8-30-202, T.C.A. §8-30-308, T.C.A. § 8-30-309, and T.C.A. § 8-30-310

1120-02-.11 PROBATIONARY PERIOD.

- (1) **Purpose of the Probationary Period.** The probationary period is an essential part of the employment process used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate ability to perform the job.
- (2) **Probationary Period for the Preferred Service.** For preferred service positions, a probationary period of at least twelve (12) months is required for all employees who receive regular appointments from a referred list. An Appointing Authority also has discretion to impose a probationary period for employees who receive regular appointments through demotion, voluntary reduction in rank, or interdepartmental transfers. The probationary period for a regular appointment may be reduced by the amount of time served in an emergency or interim appointment provided the appointment is for the same Appointing Authority in the same class of positions and there is no break in service. Non-preferred employees do not serve a

probationary period. Successful completion of a probationary period in a trainee, or intermediate level classification satisfies the probationary period requirement necessary for a preferred employee when the position is deemed to be the working level classification.

- (3) Duration of the Probationary Period. A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probation required for the class of positions.
- (4) Initial Probationary Period. The initial probationary period is the first probationary period an employee serves in a department or agency in a continuous period of employment prior to becoming a preferred employee in that agency.

An employee on initial probation may not be dismissed for cause relating to performance of duties before completion of one (1) month's service. Employees dismissed during their initial probationary period do not have the ability to appeal. The Appointing Authority must submit a written reason for dismissal to the Commissioner. Initial probationary employees not terminated or otherwise removed from the classification by the end of the probationary period become preferred employees.

- (5) Subsequent Probationary Period. A preferred service employee who accepts another preferred service position in the same agency shall serve a subsequent probationary period. Employees serving subsequent probation have the ability to appeal as described herein except when returning to their former classification.
- (6) Promotion during Probation. The probationary period for the class of positions to which an employee on probation is promoted begins with the date of appointment to such higher classification. An employee on subsequent probation who is promoted to a position in a different agency will be placed on initial probation in that agency and does not have the ability to appeal.
- (7) Work Test Period. The probationary period for an employee with a disability who is granted a substitution of the written and/or performance assessment shall run concurrently with the working test period.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, T.C.A. § 8-30-303, and T.C.A. § 8-30-308.

1120-02-.12 PROMOTIONS.

- (1) Methods of Making Promotions. A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies must be approved by the appointing authorities concerned. Promotions of employees to regular preferred service appointments will be made by a process as determined by the Commissioner. Any employee who has been demoted or reduced in rank may, at the discretion of the Appointing Authority and with the approval of the Commissioner, be promoted to a preferred service position in a classification without additional assessment or certification if the employee was a preferred employee in that classification in that agency.
- (2) Promotion by Competitive Assessment. The Commissioner and the Appointing Authority may fill a vacancy by a promotional assessment. The promotional list resulting from such assessment will be established in accordance with the applicable provisions of this Rule.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-306.

1120-02-.13 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, DEMOTION AND REDUCTION IN RANK.

- (1) Transfer. A transfer is authorized in accordance with the following:
 - (a) An Appointing Authority may transfer an employee from one position to another position in the same classification or rank in the same agency with the approval of the Commissioner.
 - (b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.
- (2) Lateral Reclassification. A lateral reclassification is authorized in accordance with the following:

- (a) An Appointing Authority may laterally reclassify any qualified employee from one position to another position in another classification in the same agency with the approval of the Commissioner.
- (b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.
- (3) Demotion. With the approval of the Commissioner, an agency may demote an employee who has failed to render satisfactory service in a position held but is considered worthy of employment. The agency must notify the employee in writing of the effective date of the demotion and the appeal process, if applicable.
- (4) Involuntary Reduction in Rank. An involuntary reduction in rank occurs when the position occupied by an employee is affected by a reduction in force or in compliance with T.C.A. § 8-30-312. An involuntary reduction in rank is not a demotion.

Employees receiving an involuntary reduction in rank do not serve an additional probationary period. Under an involuntary reduction in rank, an employee's salary may be reduced only to the top step of the salary range of the new job classification unless otherwise specified by statute. Subject to budgetary limitations, employees receiving involuntary reductions in rank may retain a salary rate above the salary range for the new job classification with the approval of the Appointing Authority and the Commissioner.

- (5) Voluntary Reduction in Rank. A voluntary reduction in rank occurs when an employee requests assignment to a position at a lower salary grade and the Appointing Authority concurs. A voluntary reduction in rank may require a salary reduction and a requirement for the completion of an initial or subsequent probationary period. A voluntary reduction in rank is not considered a demotion.

Generally, employees who receive a voluntary reduction in rank will have their salary reduced equivalent to one-half (1/2) the difference between the salary grades of the new and the current classification. Employees who receive a voluntary reduction in rank must be paid within the salary range for the new classification even if this results in a salary reduction greater than one-half (1/2) the difference between the salary grades of the new and the current classification.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-312, and T.C.A. § 8-30-313.

1120-02-.14 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION AND SEPARATION.

- (1) Tenure of Office. The service of preferred employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's record performance. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) Suspension. An Appointing Authority must provide written notice upon suspending a preferred employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) in a twelve (12) month period. With approval of the Commissioner, an Appointing Authority may suspend an employee without pay for a period greater than thirty (30) workdays, pending an investigation or trial of any charges. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) Reduction in Force. After written notice to the Commissioner, an Appointing Authority may implement a reduction in force, in accordance with the provisions of the Act. The Commissioner shall establish policies pertaining to reduction in force procedures.
- (4) Resignations. An employee who resigns must state the reasons in writing to the Appointing Authority. To resign in good standing, the employee must provide the resignation at least ten (10) days prior to the effective date of separation. Any employee who does not provide such notice can be designated as not eligible for rehire within that agency. A copy of the resignation must be placed in the employee's human resources file.

- (5) Job Abandonment. Any employee who is absent from duty for more than three (3) consecutive work days without giving written or electronic notice to the Appointing Authority or appropriate manager concerning the reason for such absence and without securing permission to be on leave, or who fails to report for duty to the immediate supervisor or the Appointing Authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent exigent circumstances causing the employee's absence or preventing the employee's return. A preferred employee who is designated resigned in accordance with these circumstances shall have the ability to appeal.
- (6) Dismissal. An Appointing Authority may dismiss a preferred employee for either unsatisfactory performance or unsatisfactory conduct. Executive service employees are at-will and serve at the pleasure of the Appointing Authority.
- (7) Re-employment Recommendation. When an employee leaves State government, the Appointing Authority may make a recommendation concerning re-employment. All separating employees not recommended for re-employment must be informed in writing by the Appointing Authority of the recommendation and its effect on future employment in state service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-314, T.C.A. § 8-30-315, and T.C.A. § 8-30-316.

1120-02-.15 CERTIFICATION OF PAYROLLS.

- (1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service must be submitted by the Appointing Authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner must certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules, and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.
- (2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner will refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.
- (3) Illegal Payments. Any Appointing Authority who appoints or employs any person in violation of the Act and these Rules may be required to pay the agreed upon salary. Any such amount so paid will not be reimbursed by the State.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-210, and T.C.A. § 8-30-211.

1120-02-.16 RECORDS AND REPORTS.

- (1) Employee Records. The Commissioner will maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner. The Commissioner may audit these files as necessary.
- (2) Reports from Appointing Authorities. The appointing authorities will report to the Commissioner in a manner prescribed by the Commissioner all changes in the employment status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.
- (3) Investigations. The Commissioner has the right to access the records, books, papers and other documents of any organizational unit pertinent to any investigation which may be necessary.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-504.

1120-02-.17 Repealed.

1120-02-.18 Repealed.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-03
CLASSIFICATION

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1120-03-.01 CREATING A CLASSIFICATION PLAN. The Department will create a classification plan, which groups positions sufficiently alike in duties, authority, and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-205, and T.C.A. § 8-30-206.

1120-03-.02 CLASSIFICATION PLAN. The classification plan established and maintained by the Commissioner, in consultation with the appointing authorities, is a compilation of the officially authorized classes of positions for the state service. The plan contains the classification specification for each classification in the preferred service which may be subdivided, grouped, or ranked as deemed proper by the Commissioner.

Authority: T.C.A. § 8-30-203.

1120-03-.03 CLASSIFICATION SPECIFICATIONS. Classification specifications for the preferred service include the following:

- (1) classification title;
- (2) summary;
- (3) distinguishing features;
- (4) examples of duties and responsibilities;
- (5) minimum qualifications;
- (6) necessary special qualifications; and
- (7) assessment method.

Authority: T.C.A. § 8-30-203.

1120-03-.04 USE OF CLASSIFICATION TITLES. The classification titles in the classification plan are used to designate all positions in the state service in all official records, vouchers, and communications concerning those positions. No person shall be appointed to, or employed in, a position in state service under a class title which has not been approved by the Commissioner. This requirement does not preclude the use of working titles by employees in those positions where the use of working titles is helpful in the employee's performance of duties, authority, and responsibilities as long as such working titles are authorized by the employee's Appointing Authority.

Authority: T.C.A. § 8-30-206.

1120-03-.05 POSITION CLASSIFICATION ACTIONS.

- (1) If an Appointing Authority makes a significant or permanent change to the duties, authority, and/or responsibilities assigned to a position, the Appointing Authority should notify the Commissioner so that the Commissioner can determine if a position reclassification is necessary. If no appropriate classification exists, the Commissioner may establish a new classification.

- (2) If a change in assigned duties, authority, and responsibilities results in reclassification of the position, the employee in the position must be certified as eligible on an eligible list and meet all requirements for an SS-7037 (October 2011)

original appointment, reappointment, promotion, mismatch, reclassification, or reduction in rank. If ineligible to continue in the position, the employee must be transferred, reclassified or separated by appropriate action in accordance with the provisions of these Rules and the Act.

- (3) The Commissioner may make changes to the classification plan as necessary to reflect changes to the duties, authority, or responsibilities of a job classification. If a preferred service classification is changed due to a modification in the structure of the classification plan, positions are reallocated. Employees who have become preferred employees in the reallocated positions may continue in those positions without further assessment or certification. Those employees who are not preferred employees must meet the minimum qualifications of the new classification and must appear on a referred list.
- (4) A position in the preferred service shall not be considered to have been abolished if the same or essential similar duties, as determined by the Commissioner, are incorporated in a new position in the same agency within one (1) year after the effective date of the layoff that resulted in the position abolishment. Any preferred service employee so affected by abolishing the position shall be offered the newly established position upon application. The newly established position to which the employee returns shall not be placed in the executive service, but shall remain in the preferred service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-202, T.C.A. § 8-30-205, and T.C.A. § 8-30-314.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-04
COMPENSATION

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1120-04-.01 THE COMPENSATION PLAN. The Commissioner will prepare a comprehensive compensation plan for all classes of positions in the state service. The plan will be developed after consultation with appointing authorities and will take into consideration the State's ability to effectively recruit, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, other benefits received by the employee, and the State's financial condition and fiscal policies.

Authority: T.C.A. § 8-30-104 , T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.02 CHANGES TO THE COMPENSATION PLAN. The Commissioner will, as needed, review the ability of the State to recruit and retain employees for the classes of positions in the state service and may also survey prevailing rates of pay, both within and outside the State. The Commissioner may also make such changes to the compensation plan as the reviews and surveys indicate are prudent, subject to budgetary limitations and as approved by the Commissioner of Finance and Administration.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.03 APPOINTMENTS. The minimum rate of pay in the applicable salary range represents the typical entry rate payable to a person on first appointment to a position in a classification. However, the Commissioner may authorize appointments above the range minimum when experience in recruiting and retaining employees for the classification or prevailing salary market data indicate persons are not available at lower rates or when appointing persons exceptionally qualified for the position including reappointments.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207.

1120-04-.04 PROMOTIONS. An employee who is promoted may receive a promotional salary increase equivalent to one-half (1/2) the difference between the salary grades of the current and the new classification, provided however, that no employee may be paid at a rate less than the range minimum in the salary range for the new classification and that no preferred employee shall receive a promotional salary increase which exceeds the range maximum in the salary range for the new classification. Employees may receive promotional increases of greater or lesser amounts upon recommendation of the Appointing Authority, subject to the approval of the Commissioner and budgetary limitations. The Commissioner shall establish a policy regarding promotions for persons in flexibly-staffed positions.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.05 DEMOTIONS. An employee who is demoted may receive a salary reduction equivalent to one-half (1/2) the difference between the salary grades of the current and the new classification. Employees who are

demoted must be paid within the salary range for the new classification even if this results in a salary reduction greater than one half (1/2) the difference between the salary grades of the current and the new classification. Demoted employees may receive a salary reduction of a greater or lesser amount upon recommendation of the Appointing Authority, subject to the approval of the Commissioner and budgetary limitations.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, T.C.A. § 8-30-312 and T.C.A. § 8-30-313.

1120-04-.06 INVOLUNTARY REDUCTION IN RANK. Unless otherwise specified by law, the Commissioner may approve an Appointing Authority's recommendation that an employee who receives an involuntary reduction in rank be paid at a rate above the range maximum for the new classification or the employee's salary be reduced to the maximum of the salary range for the new classification. Unless otherwise specified by law and subject to budgetary limitations, the salary of an employee who receives an involuntary reduction in rank may not be reduced if it falls within the salary range of the lower classification.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, and T.C.A. § 8-30-312.

1120-04-.07 VOLUNTARY REDUCTION IN RANK. An employee voluntarily reduced in rank typically experiences a reduction in salary in accordance with established policy.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-312.

1120-04-.08 EMPLOYEE TRANSFER AND LATERAL RECLASSIFICATION. An employee who is transferred does not receive a salary change as a result of such action. An employee who is laterally reclassified does not receive a salary increase unless the lateral reclassification results in a career path change as determined by the Commissioner. Those making a career path change may receive a one (1) step salary increase as long as agency funds are available and the employee's salary does not exceed range maximum.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-312.

1120-04-.09 RATES ABOVE SPECIFIED SALARY RANGE. Employees who receive salary adjustments required by law or who receive salary differentials authorized by these Rules may be paid at a salary rate higher than the maximum of the salary range of their classification. Employees who receive a reduction in rank may have a salary rate above the maximum if recommended by the Appointing Authority and approved by the Commissioner. Such employees are eligible for longevity pay and other increases as specified by law or rule.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.10 SALARY GRADE ADJUSTMENTS. The Commissioner may adjust the salary grades of classifications to recognize changes in the duties, responsibilities, and authority. The Commissioner may also establish new salary ranges as a result of a competitive market analysis or a study focusing on recruiting and retaining employees in specific job classifications. The salary grade changes are subject to budgetary limitations and approval by the Commissioner of Finance and Administration. Any employee whose salary is below the minimum of the new salary range will be adjusted at least to the new minimum. Any employee whose salary is above the maximum of the new salary range will not receive an increase. Based on the Appointing Authority's written justification, the Commissioner may waive the reduction in salary of an employee whose salary is above the maximum of the new salary range.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.11 SALARY INCREASES FOR OBTAINING PROFESSIONAL CERTIFICATION OR COLLEGE DEGREE. Subject to budgetary limitations, any employee who obtains a nationally recognized professional certification or a college degree from an accredited college or university within their occupational field may be eligible for a salary increase as approved by both the Commissioner and the Commissioner of Finance and Administration. Any clerical-secretarial or clerical-management employee in the state service who passes all parts of either the Certified Professional Secretary Examination or the Certified Administrative Professional Examination, sponsored by the International Association of Administrative Professionals will be granted the salary increase prescribed by law.

Authority: T.C.A. § 8-50-102.

1120-04-.12 LONGEVITY. Longevity is a lump sum payment intended to reward employees for service to the State and to encourage those employees to remain employed by the State. The Commissioner shall establish a policy concerning the calculation and payment of longevity.

Authority: T.C.A. § 8-23-206.

1120-04-.13 SALARY ADJUSTMENTS. The Commissioner shall establish a policy for adjusting an employee's salary rate based on equity or for permanently assuming duties of greater scope and complexity. Subject to budgetary limitations, the Commissioner shall approve such permanent salary adjustments based upon justification submitted by the Appointing Authority.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, and T.C.A. § 8-30-214.

1120-04-.14 TEMPORARY ADJUSTMENTS TO SALARY OR BONUS PAYMENTS.

Subject to budgetary limitations, the Commissioner, may approve temporary salary differentials or bonus payments for employees assuming duties of greater scope or complexity. Salary differentials shall be periodically reviewed and approved by the Commissioner.

Subject to budgetary limitations, the Commissioner may approve incentive bonus payments based upon justification submitted by the Appointing Authority. Such payments shall not be made to compensate the employee for additional work hours.

The Commissioner shall establish a policy specifying the terms and conditions under which such temporary salary differentials or bonus payments may be paid.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.15 ASSIGNING DUTIES OF A HIGHER LEVEL CLASSIFICATION. No preferred service employee shall be assigned to perform the majority of the duties and responsibilities of a position in a higher level classification than that of the position occupied by the employee, without the approval of the Appointing Authority. When an employee is so assigned, the duration cannot exceed ninety (90) days without the approval of the Commissioner. The total length of the assignment will be limited to a period of twelve (12) months.

The Commissioner, in consultation with the Commissioner of Finance and Administration, shall establish a policy under which an employee who is assigned to perform the majority of the duties and responsibilities of a higher level classification shall receive additional compensation for such assignment.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-209.

1120-04-.16 FAIR LABOR STANDARDS ACT. The Commissioner, in compliance with the Fair Labor Standards Act, shall designate the classifications which receive cash overtime, classifications which receive compensatory overtime, and classifications which receive no overtime.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-208.

1120-04-.17 MERIT PAY. The Commissioner shall establish guidelines to govern the distribution of any funds which may be available for merit pay for members of the state service.

- (1) The guidelines shall establish objectively measurable criteria, which ensure that the merit pay system:
 - (a) rewards above-average performance;
 - (b) improves efficiency;
 - (c) encourages participation in programs that will improve job performance and skills; and
 - (d) does not permit, facilitate or promote discrimination on account of race, color, national origin, gender, age, disability, religion or creed, veteran's status or political opinions or affiliations.

- (2) Such guidelines shall also provide that merit pay funds are consistently distributed in a fair and equitable manner.
- (3) All employees shall be eligible for merit pay pursuant to rules promulgated by the department.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES
CHAPTER 1120-05
PERFORMANCE PLANNING AND EVALUATION
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1120-05-.01 EVALUATIONS. Each agency shall provide written plans detailing the standards of performance and the expected outcomes for all employees and shall periodically evaluate the results on dates and in such manner as prescribed by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.02 EMPLOYEES TO BE EVALUATED. The performance of all employees in the state service will be evaluated in a manner subject to this Rule and the policies of the department.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.03 EVALUATION PROCESS. An agency shall conduct, at a minimum, the following evaluation process:

- (1) Performance Plan. The supervisor and the employee shall have an initial discussion for the purpose of explaining and clarifying the performance evaluation process, expected work outcomes and behavioral expectations for which performance will be evaluated, and the performance necessary to maintain or achieve an acceptable rating. Employee expected work outcomes and behavior expectations must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or division and time sensitive.
- (2) Periodic Reviews. Supervisors shall provide periodic reviews of performance to provide constructive feedback, discuss means of enhancing performance results and, if appropriate, to discuss the consequences of unsatisfactory performance. Employees shall receive at least two (2) periodic reviews during the review cycle.
- (3) Evaluation of Performance. Employees shall receive a formal written evaluation of the expected performance standards at the end of the performance cycle which grants the employee the opportunity to comment.
- (4) Official Review. An official review of the performance evaluation shall occur in accordance with policy. Once approved, the evaluation becomes the record of the employee's performance.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.04 USE IN MAKING HUMAN RESOURCES DECISIONS. Performance evaluations may be used as follows:

- (1) to determine salary increases and decreases within the limits established by the compensation plan;
- (2) as a factor in making or denying promotions; and
- (3) as a means of determining employees:
 - (a) who are candidates for promotion or transfer; or

- (b) who, because of a low job performance evaluation, are candidates for demotion, dismissal or reduction in force.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.05 RECORDS. Each agency shall record the evaluation of each employee in a manner prescribed by the Commissioner. Performance evaluations of all employees shall not be considered public records under T.C.A. § 10-7-503. Nothing in this section shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.06 TRAINING. The Appointing Authority shall ensure that persons responsible for conducting and/or reviewing the performance evaluation of any employee complete a training program specified by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.07 ADMINISTRATIVE REVIEW. An employee who receives a completed performance evaluation may file a request for administrative review based on procedural violations as follows:

- (1) Appointing Authority. Within fourteen (14) days of receipt of the evaluation, an employee may file a written request for review, along with all relevant documentation, to the Appointing Authority. The Appointing Authority shall respond in writing to the employee within fifteen (15) days.
- (2) Department Review. Within fourteen (14) days of the receipt of the Appointing Authority's written decision, an employee may file a written request for review, along with all relevant documentation, to the Commissioner. The Commissioner shall issue a written response within fifteen (15) days. The decision of the Commissioner shall be final and not subject to further review.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

RULES
OF THE
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Chapter 1120-06
ATTENDANCE AND LEAVE

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1120-06-.01 RESPONSIBILITY. It is the employee's responsibility to request appropriate leave and the immediate supervisor shall be responsible for approving such leave.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.02 REGULAR WORK SCHEDULE. The regular schedule for most employees is 8:00 a.m. to 4:30 p.m., Monday through Friday. Local conditions may cause these hours to vary, but an employee scheduled to work seven and a half (7.5) hours per day, Monday through Friday, is considered to be on a regular work schedule. Any agency may use irregular work schedules and vary its work hours and workdays at the discretion of the Appointing Authority. Any work schedule can be modified as necessary to provide a reasonable accommodation for an employee with a disability, as determined by the Appointing Authority. Any full-time schedules other than thirty-seven and a half (37.5) hours per week must be approved in advance by the Commissioner and the Commissioner of Finance and Administration.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.03 WORKWEEK. The standard workweek for accounting purposes begins at 12:01 a.m. Sunday and runs one hundred sixty eight (168) continuous hours with seven (7) consecutive twenty-four (24) hour periods to 12:01 a.m. the following Sunday. Variation to this standard workweek must be submitted to and approved by the Commissioner.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.04 CASH OVERTIME AND/OR ACCRUAL OF COMPENSATORY TIME. The Fair Labor Standards Act (FLSA) mandates that non-exempt employees receive additional compensation in certain circumstances. In addition, T.C.A. § 8-23-201 provides that additional compensation may be paid to certain state employees who work in excess of regularly scheduled hours at the direction of an appropriate manager. The Commissioner will establish policy and procedures for administering overtime payments to include the following:

- (1) Exempt Non-Compensatory Time Employees. Employees defined as "exempt non-compensatory time" by the Commissioner will not be eligible to receive any compensation for hours worked beyond their regular schedule. However, if an exempt non-compensatory time employee is scheduled to work on a legal holiday, the Appointing Authority may grant discretionary leave with pay equal to the hours worked on a legal holiday.

- (2) **Exempt Employees.** Employees defined as "exempt" by the FLSA may receive regular compensatory time for hours worked beyond their regular schedule provided that it was at the direction of the Appointing Authority or other appropriate supervisor or manager. The Commissioner shall determine the exempt classes that are eligible for this regular compensatory time. Exempt employees may accumulate a maximum of four hundred and eighty (480) hours of regular compensatory time. Regular compensatory time is earned on an hour-for-hour basis and is distinct from premium compensatory time authorized by the FLSA.
- (3) **Non-Exempt Employees.** Employees defined as "non-exempt" by the FLSA must receive compensation for all hours spent performing the principle duties assigned to them provided that it was at the direction of the Appointing Authority or other appropriate supervisor or manager. Non-public safety employees who are non-exempt may accumulate no more than two hundred and forty (240) hours of premium compensatory time. Their total compensatory time (regular and premium compensatory time) may not exceed four hundred and eighty (480) hours. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory time.
- (4) **Exceptions.** Individual exceptions to this rule must be recommended by the Appointing Authority and approved in advance by the Commissioner and the Commissioner of Finance and Administration. Such recommended exceptions must be consistent with state and federal law and in consultation with the Comptroller of the Treasury and the Attorney General's Office.

Authority: T.C.A. § 8-23-201, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-208.

1120-06-.05 COMPENSATORY TIME. Compensatory time is leave credit earned by an exempt or non-exempt employee when hours are worked beyond their regular schedule and not compensated in cash. Compensatory time is generally accrued on a weekly basis. The Commissioner will establish policy and procedures to include the following:

- (1) **Use of Compensatory Time.** The use of compensatory time is subject to the approval of the Appointing Authority or a designated manager in the same manner as annual leave. An employee who has accrued compensatory time and requests use of that time shall be permitted to use such time off within a reasonable period after making the request. When a request for compensatory time off is received, it shall be honored unless to do so would be unduly disruptive to the agency's operations. Mere inconvenience is an insufficient basis for denial. An agency should reasonably and in good faith anticipate that the employee's request would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

Reasonable period will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.

The use of compensatory time in lieu of cash payment for overtime by non-exempt employees must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work.

- (2) **Compensatory Time Transferable.** An employee's compensatory time shall be transferred between state service agencies. If an employee in a state service agency transfers to another state agency outside the state service which will not accept the employee's compensatory time balance, the state service agency must compensate the transferring employee for the value of the employee's compensatory time balance. The value of the compensatory time accrued by an exempt employee is calculated based on the employee's regular hourly rate in the state service agency at the time of transfer.
- (3) **Use of Compensatory Time Before Annual Leave.** Accumulated compensatory time must be used before annual leave unless an employee's accumulated annual leave balance is within two (2) days of the maximum accrual allowed for the employee as provided in these Rules.
- (4) **Payment of Compensatory Time at Separation.** Generally, an agency must make a lump sum payment for accrued compensatory time when an employee separates from state service. If, however, a retiring employee requests terminal leave, that employee must use accrued compensatory time prior to terminal

leave. Terminal leave is the annual leave balance of a retiring employee. Any annual leave balance remaining after the employee's last working day is considered terminal leave.

- (5) Amount Earned and Maximum Accumulation. Non-public safety employees who are non-exempt may accumulate a maximum of two hundred and forty (240) hours of premium compensatory overtime. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory overtime. Totals for regular and premium compensatory overtime will be added together and no employee will be allowed to exceed a total accumulation of both regular and/or premium compensatory overtime over four hundred and eighty (480) hours. Any variation to this maximum accrual limit must be approved in advance by the Commissioner and the Commissioner of Finance and Administration.

Any exempt or non-exempt employee who earns authorized overtime credit in excess of the maximum accrual must be paid cash for those hours on an hour-for-hour basis unless the Fair Labor Standards Act requires payment at a premium rate.

Non-exempt employees are permitted to receive premium (time and one-half) compensatory overtime in lieu of premium cash overtime if the agency lacks the necessary funds or if the employee requests compensatory time instead of cash and the Appointing Authority approves the request. Premium compensatory overtime occurs when a non-exempt employee, who is authorized to receive compensatory overtime in lieu of cash, physically works more than forty hours (40) during a work week, the employee shall be compensated at one and half times the hours actually worked above forty (40).

Authority: T.C.A. § 8-23-201, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406, and T.C.A. § 8-50-801.

1120-06-.06 LUNCH PERIOD. All employees, except those specifically excluded in T.C.A. § 4-4-105, are allowed a one (1) hour unpaid lunch (meal) period. If a supervisor requires an employee to work during any part of their one (1) hour meal period, the employee is considered to be at work and must be compensated accordingly.

The authorized meal period must be taken during the work shift and may not be used to alter arrival or departure time by not using the meal period or any part thereof.

Certain employees cannot be relieved of duties to have a meal period during their work shift. The employee situation usually results from "fixed post" assignments in which employees may not leave their work station. These employees are considered to be at work even if they are able to eat a meal during their work shift and must be compensated accordingly.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.07 REST BREAKS. Appointing authorities, at their discretion, may allow their employees two (2) rest breaks, of fifteen (15) minutes duration each, during a workday. These rest breaks are a privilege and not a right and should be taken at times that do not interfere with service to the public. A rest break may not be used to alter arrival or departure time, used in conjunction with the lunch hour, used with any type of leave, or be accumulated for usage at a later time.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.08 ABSENCE DUE TO SPECIFIC CIRCUMSTANCES. The Commissioner will establish policy concerning absences for:

- (1) Inclement weather;
- (2) Public health emergency;
- (3) State emergency; and
- (4) Uninhabitable building.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.09 ELIGIBILITY TO ACCRUE LEAVE. An eligible employee accrues annual and sick leave based upon hours worked, excluding overtime, pursuant to T.C.A. § 8-50-801 and T.C.A. § 8-50-802.

Leave is accrued on a regular workday basis. One day of leave is equivalent to seven and one-half (7.5) hours for employees on a thirty-seven and one-half (37.5) hour per workweek schedule. One day of leave is equal to eight (8) hours for employees on a forty (40) hour per workweek schedule. Employees on other workweek schedules as approved by the Commissioner accrue based on those schedules.

Employees changing from one schedule to another will have their hourly balances adjusted accordingly.

Employees who work sixteen hundred (1,600) hours in a year and work the major portion of the month are eligible to accrue leave, except for those listed in T.C.A. § 8-50-801(e).

Authority: T.C.A. § 8-23-101, T.C.A. § 8-50-801, and T.C.A. § 8-50-802.

1120-06-10 ANNUAL LEAVE. The Commissioner will establish policy and procedures for administering annual leave in accordance with T.C.A. § 8-50-801.

- (1) Amount Earned and Maximum Accumulation. Annual leave is earned with maximum accumulation as follows:
 - (a) Employees with less than five (5) years of full-time service accrue annual leave at the rate of one (1) day for each month or major fraction of a month of active service and may accumulate a maximum of thirty (30) workdays.
 - (b) Employees with five (5) years and less than ten (10) years of full-time service accrue annual leave at the rate of one and one-half (1 ½) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-six (36) workdays.
 - (c) Employees with ten (10) years and less than twenty (20) years of full-time service accrue annual leave at the rate of one and three-fourths (1 ¾) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-nine (39) workdays.
 - (d) Employees with twenty (20) years or more of full-time service accrue annual leave at the rate of two (2) days for each month or major fraction of a month of active service and may accumulate a maximum of forty-two (42) workdays.
- (2) Creditable Service. Any month, which was a part of a sixteen hundred (1,600) hour or greater annual schedule, in which an employee is scheduled to work a full month, and actually works one-tenth of one hour more than half the scheduled hours, shall be creditable for maximum accumulation purposes.
- (3) Transfer of Annual Leave to Sick Leave. Leave earned in excess of the maximum allowable accumulation based on years of service as defined in T.C.A. § 8-50-801 will be transferred to the employee's sick leave account annually in the month of the employee's last hire date.
- (4) Annual Leave Paid as a Lump Sum. When separating from state employment, an employee shall be paid for any annual leave accumulation in a lump sum unless that employee is dismissed or terminated from state service for gross misconduct, or resigns from state service to avoid dismissal for gross misconduct, or was guilty of gross misconduct prior to leaving state service. In cases involving gross misconduct, the employee forfeits his annual leave.
- (5) Annual Leave as Terminal Leave Prior to Retirement. An employee may use annual leave as terminal leave when retiring from state employment or may receive a lump sum payment for annual leave balances.
- (6) Annual Leave May Not Be Advanced. Annual leave may not be taken until earned.
- (7) Employee Meetings. Annual leave may be used to attend meetings of employee associations which are qualified for payroll dues deduction. Except as enumerated in T.C.A. § 8-50-110, leave allowed for this purpose cannot exceed two (2) days per year.
- (8) Annual Leave Transferable. Unless there is a break in service, annual leave must be transferred to and will be accepted from, state agencies and higher education institutions, legislative and judicial branches.

Authority: T.C.A. § 8-50-110, T.C.A. § 8-50-801, T.C.A. § 8-50-803, and T.C.A. § 8-50-807.

1120-06-.11 SICK LEAVE. Sick leave is accrued by an employee at the rate of one (1) day for each month or major fraction of a month of active service. The Commissioner will establish policy and procedures governing the use of sick leave.

- (1) Use of Sick Leave. An Appointing Authority may grant an eligible employee sick leave for any of the following reasons:
 - (a) personal illness;
 - (b) disability due to accident;
 - (c) exposure to a contagious disease;
 - (d) medical and dental appointments;
 - (e) illness or death in the immediate family, or others who, at the discretion of the Appointing Authority, have a relationship which merits similar consideration;
 - (f) birth and care of an infant child (up to thirty (30) workdays); and
 - (g) adoption (up to 30 working days if the child is one year old or less).
- (2) Reinstatement of Accumulated Sick Leave. Employees who work on a full-time continuous basis for one full year or more, leave in good standing, and return to work shall be credited with and may use paid sick leave accumulated prior to separation immediately upon certification of the previous balance from the appropriate agency. Persons hired from state higher education institutions and persons who were teachers with local school boards in Tennessee are also included under this provision.
- (3) Sick Leave Transferable. Unless there is a break in service, sick leave must be transferred to and will be accepted from state agencies and higher education institutions, legislative and judicial branches.
- (4) Required Documentation. Any employee may be required to present evidence to an Appointing Authority, the Commissioner, or any other appropriate authority, to support the reason for any absence for which sick leave was taken.
- (5) Doctor's Certification of Absence. Sick leave may not be denied to any employee who furnishes a statement of a licensed physician or accredited Christian Science practitioner in support of the reason for such absence. Additional documentation may be required if there is substantial evidence of sick leave abuse by the employee.
- (6) Sick Leave Restrictions.
 - (a) Sick Leave During Terminal Leave. Sick leave may not be used as terminal leave. An employee presenting evidence of an illness during terminal leave may utilize sick leave up to the original separation date.
 - (b) Sick Leave may not be Advanced. Sick leave may not be taken until earned.

Authority: T.C.A. § 4-21-408, T.C.A. § 8-50-802, T.C.A. § 8-50-803, T.C.A. § 8-50-804, T.C.A. § 8-50-806, and T.C.A. § 8-50-807.

1120-06-.12 BEREAVEMENT LEAVE.

- (1) The officers and employees of the various agencies, boards, and departments of state government shall be granted three (3) days paid leave in the event of death of such officers' or employees' spouse, child, step-child, parents, siblings, grandparents, grandchildren, stepparents, foster parents, or parents-in-law without charge to the affected officers' or employees' accumulated leave accounts. One (1) day of leave is equivalent to seven and a half (7.5) hours for employees on a thirty-seven and a half (37.5) hour per workweek schedule. One (1) day of leave is equivalent to eight (8) hours for employees on a forty (40) hour per workweek schedule. One (1) day of leave is equivalent to twelve (12) hours for the Department of Military firefighters.
- (2) This section shall not be construed to increase the total number of leave days provided in rules of the Department of Human Resources for the death of a family member as defined in this section.

Authority. T.C.A. § 8-50-113.

1120-06-.13 SPECIAL LEAVE. Special leave is leave without pay. At the discretion and upon recommendation of the Appointing Authority, the Commissioner may approve requests for special leave in accordance with policy and procedure.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.14 HOLIDAYS. The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner, may also establish additional time off for observance of holidays. The following days have been designated by the General Assembly as legal holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

The Governor may, at his discretion, substitute the Friday after the fourth (4th) Thursday in November for Columbus Day. Employees who are ineligible to accrue leave are not eligible for holiday pay.

Authority: T.C.A. § 8-30-406 and T.C.A. § 15-1-101.

1120-06-.15 CIVIL LEAVE. The Commissioner will establish policy and procedures for state employees to be excused from their job duties when involved in civil or criminal proceedings as a juror.

Authority: T.C.A. § 22-4-106.

1120-06-.16 EDUCATIONAL LEAVE. The Commissioner will establish policy and procedures for state employees to be placed on educational leave for participation in full-time continuing education as defined in Rules of the Department of Human Resources 1120-8.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.17 MILITARY LEAVE.

- (1) Military Leave with Pay. A leave of absence with pay, not to exceed twenty (20) working days in any one year, will be granted to employees who are members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard, for periods they are engaged in the performance of duty or training activities in the service of the State or the Federal Government while under orders. Holidays and scheduled off duty days do not count toward the twenty (20) days allowed. During the period of approved paid military leave, the employee incurs no loss of service time and continues to earn regular annual leave and sick leave. There shall be no loss of rights or benefits to which the employee is otherwise entitled. Military leave with pay will not be granted for regularly scheduled monthly training for reservists or national guardsmen.
- (2) Military Leave without Pay. Leave without pay will be granted for periods of active duty or training activity with the Armed Forces of the United States, its reserve components, or the Tennessee National Guard for authorized periods beyond the twenty (20) days of paid leave in a calendar year. In addition, leave without pay will be granted to employees entering the regular components of the Armed Forces of the United States as a result of military conscription or for a period of voluntary enlistment. During the period of leave without pay for military service, the employee retains all accumulated annual and sick leave, retirement status, and

continues to earn time toward seniority, retirement and longevity pay. Continuation in the State's insurance programs, if elected, shall be granted subject to appropriate state insurance program provisions.

- (3) Air Force Auxiliary Civil Air Patrol Leave. A leave of absence with pay, not to exceed fifteen (15) working days in any one calendar year, will be granted to employees who are members of the United States Air Force Auxiliary Civil Air Patrol and who participate in a training program for the civil air patrol, or in emergency and disaster services, as defined in T.C.A. § 58-2-101, if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative. In addition, leave without pay will be granted to employees on Civil Air Patrol Leave. During the period of leave without pay, the employee retains all accumulated annual and sick leave, retirement status, and continues to earn time toward seniority, retirement and longevity pay. Continuation in the State's insurance programs, if elected, shall be granted subject to appropriate state insurance program provisions.

Authority: T.C.A. § 8-33-105, T.C.A. § 8-33-109, and T.C.A. § 42-7-102.

1120-06-.18 ADMINISTRATIVE LEAVE FOR DISASTER. A state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from work with pay for a period not to exceed fifteen (15) workdays in each year to participate in special disaster relief services for the American Red Cross. The employee shall be released from work for this function upon written request of the American Red Cross for the services of that employee, and upon written approval of that employee's Appointing Authority.

Authority: T.C.A. § 8-50-810.

1120-06-.19 PARENTAL LEAVE.

- (1) An employee who has been employed for at least twelve (12) consecutive months as a full-time employee, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.
- (2) An employee may use up to thirty (30) sick leave workdays for parental leave. In the event both parents are state employees, the aggregate sick leave used is limited to thirty (30) days.
- (3) In incidents of adoption, an Appointing Authority has the discretion to grant additional special leave not to exceed one (1) year.
- (4) The Commissioner will establish procedures pertaining to parental leave.

Authority: T.C.A. § 4-21-408, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, T.C.A. § 8-50-802, and T.C.A. § 8-50-806.

1120-06-.20 FAMILY AND MEDICAL LEAVE. The Commissioner shall establish procedures for implementing the provisions and requirements of the Family and Medical Leave Act (FMLA).

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.21 DIVISION OF CLAIMS ADMINISTRATION LEAVE. The Division of Claims Administration is responsible for determining whether an employee is eligible for workers' compensation due to a job related injury or illness.

- (1) Workers' Compensation Pay. An employee may not receive workers' compensation pay for any period that the employee used sick, annual, or compensatory leave.
- (2) Effect on Anniversary Dates. Time served on Division of Claims Administration leave will not affect the employee's longevity, salary or service anniversary date.
- (3) Assault Pay. Employees who are injured in the line of duty, as the result of an assault which disables them from performing their jobs, will be allowed to remain on the regular payroll for a period not to exceed twenty-eight (28) calendar days subject to approval by the Commissioner. Such disability must have occurred no later than twenty-eight (28) calendar days from the date of injury. If the same injury results in an employee being unable to perform his job for more than twenty-eight (28) calendar days and provided that a proper

claim has been filed with the Division of Claims Administration within ten (10) calendar days of the date of injury, the employee may receive the difference between his regular salary and the weekly compensation rate awarded by the Division of Claims Administration for an additional sixty-two (62) calendar days. Thus, an employee who is disabled as a result of an assault may receive full pay through a combination of regular payroll and Division of Claims Administration compensation for a total of ninety (90) calendar days before being reduced to the usual lost time rate of the Division of Claims Administration or using accumulated sick, annual or compensatory leave.

- (4) Injured in the Line of Duty. A commissioned member of the Tennessee Department of Safety, a driver's license examiner, correctional officer or youth service officer who is injured in the line of duty, and whose injury disables him from performing his regular duties, whether such disability is temporary or permanent, shall be retained upon the regular payroll until the employee's claim for compensation for such disability is determined by the Division of Claims Administration. The Governor and the Attorney General must approve the request of the Appointing Authority.

Authority: T.C.A. § 8-50-111 and T.C.A. § 68-102-402.

1120-06-.22 TERMINAL LEAVE. A retiring employee may elect terminal leave unless the employee is retiring from state service to avoid dismissal for gross misconduct.

- (1) Employees Subject to State Retirement. Employees who are members of the Tennessee Consolidated Retirement System and are entitled to terminal leave must be compensated for their terminal leave prior to the effective date of their retirement.
- (2) Termination of Benefits. On the date terminal leave begins, an employee will:
 - (a) Cease to be in a leave earning status.
 - (b) Cease to be eligible for salary increases or salary adjustments. The salary rate in effect on the day before the employee begins terminal leave will be used to determine terminal leave payments.
- (3) Accounting for Terminal Leave:
 - (a) Saturdays, Sundays and Legal Holidays. Saturdays, Sundays and official holidays shall not be used in computing terminal leave unless such days are considered as workdays for the employee in the employee's job assignment. To be paid for a holiday while on terminal leave an employee must be on terminal leave past the holiday.
 - (b) Beginning and Ending of Terminal Leave Period. Terminal leave must begin the next workday following the last day in active pay status. Active pay status is a term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank leave. The day after the last day of terminal leave will be the employee's official date of separation.

Authority: T.C.A. § 8-50-801, T.C.A. § 8-50-807, and T.C.A. § 8-50-808.

1120-06-.23 ACCRUED LEAVE BALANCES PAID AT DEATH. Leave balances of deceased employees shall be paid as lump sum payments. Any outstanding leave balance (sick, annual, or compensatory) will be paid to a beneficiary designated by the employee or, if none, the beneficiary designated for receipt of retirement benefits with the Tennessee Consolidated Retirement System, or, when appropriate, the deceased employee's estate.

Authority: T.C.A. § 8-50-807 and T.C.A. § 8-50-808.

1120-06-.24 PAID LEAVE FOR EXCUSED ABSENCES. A full-time employee may be granted leave with pay for the following excused absences:

- (1) State Assessment or State Job Interview. An agency may require written verification that the employee was at a state administered assessment or at a state job interview.
- (2) Elections. Any person entitled to vote in an election held in this state must be granted paid leave on the day of the election not to exceed three (3) hours in accordance with established procedures. If the work schedule of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or

more hours before closing of the polls of the county where the employee is registered to vote, paid leave will not be granted. The Commissioner may specify the hours during which the employee may be absent. Application for such absence shall be made to the employee's Appointing Authority before twelve o'clock (12:00) noon of the day before the election.

- (3) Discretionary. An Appointing Authority may grant discretionary leave with pay to an employee for a period of time not to exceed ten (10) working days when it is considered necessary for the welfare of the employee or the proper operation of the agency. The Commissioner must approve any period of discretionary leave that exceeds ten (10) working days. The Appointing Authority must submit such requests in writing directly to the Commissioner.

Authority: T.C.A. § 2-1-106 and T.C.A. § 8-30-406.

1120-06-.25 RESPONSIBILITY FOR RECORDS AND REPORTS. The Commissioner will designate a manner for documenting official attendance and leave information for employees in state service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, and T.C.A. § 10-7-504.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-07
EQUAL EMPLOYMENT OPPORTUNITIES

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- 1120-07-.02 Agency Responsibilities
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1120-7-.01 STATEMENT OF POLICY.

The State of Tennessee is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal discrimination or illegal harassment in the workplace. It is the state's policy to provide an environment free of discrimination or harassment of an individual because of that person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status, or any other category protected by state and/or federal civil rights laws.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, and T.C.A. § 8-50-104.

1120-7-.02 AGENCY RESPONSIBILITIES.

In demonstrating the agency's commitment to the equal employment opportunities policy, each Appointing Authority in state service shall:

- (1) Be held responsible for compliance with the state law, policy, and executive orders pertaining to equal employment opportunities (EEO), Americans with Disabilities (ADA) and Affirmative Action (AA);
- (2) Develop an equal employment opportunity compliance policy statement and inform employees of the agency's commitment to that policy;
- (3) Designate an employee to coordinate EEO, ADA, and AA programs within that agency;
- (4) Inform supervisory personnel of their role in carrying out the agency's equal employment opportunities policies;
- (5) Maintain processes for internal investigations of workplace discrimination or harassment complaints; and
- (6) Submit to the Commissioner a completed affirmative action plan annually in a manner prescribed by the Commissioner.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, and T.C.A. § 8-50-104.

1120-7-.03 DEPARTMENT OF HUMAN RESOURCES' RESPONSIBILITIES.

- (1) The Commissioner shall represent the Governor in matters relating to equal employment opportunities in state service;
- (2) The Department shall periodically review employment practices to insure that these practices are not discriminatory;
- (3) The Commissioner will establish appropriate guidelines and procedures governing the preparation, submission and review of the affirmative action plan by each agency;

- (4) The Department will provide training and technical assistance in the development, implementation and monitoring of agencies' affirmative action plans and equal employment programs;
- (5) The Department will provide training and technical assistance to employees and agencies regarding compliance with the ADA;
- (6) The Department will inform any person claiming unlawful discrimination or harassment of the appropriate procedures for pursuing a complaint.
- (7) The Department will report to the Governor the equal employment opportunity activities of each department, agency and commission in the state service; and
- (8) The Department will inform the Governor when instances occur of non-compliance or failure to demonstrate good faith efforts under this rule.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, and T.C.A. § 8-50-104.

RULES
OF THE
DEPARTMENT OF HUMAN RESOURCES

CHAPTER 1120-08
LEARNING AND DEVELOPMENT

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1120-08-.01 LEARNING AND DEVELOPMENT PROVIDED BY THE DEPARTMENT. The Department shall provide education and training, professional skills, talent development, leadership development, and continuing education, as well as out-service training approval for all state employees which:

- (1) Improves productivity, effectiveness, and efficiency of government service by enhancing employee performance;
- (2) Assists employees in developing professional skills; and
- (3) Develops managers and supervisors in effective management and leadership practices.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and § T.C.A. § 8-30-313.

1120-08-.02 RESPONSIBILITY FOR LEARNING AND DEVELOPMENT. The Department is responsible for statewide planning, coordination, and review of learning and development programs as well as direct delivery of initiatives, trainings, conferences and/or workshops as identified herein.

Each state agency shall maintain a record of every employee's learning and development activities in a manner identified by the Commissioner. Such records shall be submitted to the Department on a regular basis as established by policy.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.03 MANDATORY TRAINING. Employees are required to attend certain learning and development workshops provided by the Department as identified in policy.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-08-.04 REQUESTS FOR CONTINUING EDUCATION, LEARNING AND DEVELOPMENT. Upon the identification of a specialized technical need by the agency, an employee may be eligible for continuing education from higher education, vocational, and professional institutions. Agencies must submit requests for continuing education, learning and development not offered by the Department to the Commissioner for approval.

Employees, in consultation with the agency, may select one of the following continuing education options:

- (1) **Full-time Education.** Full-time education lasts for more than eighty (80) workdays and may require residency at an institution or facility. During the program, the employee is relieved of regular job responsibilities;
- (2) **Part-time Education.** Part-time education lasts for less than eighty (80) workdays and is held during the employee's regular work hours. The employee maintains regular job responsibilities during this program;
- (3) **Short-term Learning.** Short-term learning consists of seminars, short courses, and educational workshops that last for less than eighty (80) workdays. The employee maintains regular job responsibilities during this program; and
- (4) **After Work Hours Education or Learning.** After work hours education, learning and development consists of seminars, short courses, and educational workshops and is held outside the employee's scheduled shift. The employee maintains regular job responsibilities during this program.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.05 CONTINUING EDUCATION, LEARNING AND DEVELOPMENT. All state employees are eligible to participate in continuing education, learning and development related to their current job assignment, subject to the recommendation of the Appointing Authority and the approval of the Commissioner and the Commissioner of Finance and Administration.

- (1) Criteria. The Commissioner may approve continuing education, learning and development based on any of the following criteria:
 - (a) Lack of availability of programs offered by the Department;
 - (b) Job relatedness;
 - (c) Cost-effectiveness; or
 - (d) Availability of programs in public Tennessee higher education institutions;
- (2) Appointing Authority Responsibilities. The Appointing Authority must:
 - (a) Submit to the Commissioner, in advance, an approval request for each employee to attend continuing education, learning and development;
 - (b) Monitor employee attendance and performance; and
 - (c) Document completion and maintain a public record.
- (3) Salary and Related Expenses. In the event the Appointing Authority grants reimbursement to the employee for salary and related expenses, the Appointing Authority must approve, in advance, reimbursement for the following and submit the authorization to the Commissioner:
 - (a) Travel. Reimbursement shall be for travel in accordance with the State's comprehensive travel regulations;
 - (b) Tuition. The Appointing Authority shall determine and approve tuition reimbursement subject to the approval of Finance and Administration; and
 - (c) Salary. Salary payment is based on the following types of continuing education and learning:
 - (i) Full-time. Employees in full-time education shall receive seventy-five percent (75%) of their regular salary. When the State requires an employee to obtain additional education, employee compensation is possible at full salary with the prior approval of the Commissioner and the Commissioner of Finance and Administration. If an employee receives salary assistance through scholarships, fellowships, grants or other outside sources, the total amount received from the State and outside sources during the continuing education period shall not exceed the employee's regular salary. The employee must submit a notarized statement of salary funding and sources to the Appointing Authority.
 - (ii) Part-time. Employees in part-time education shall receive their regular salary.
 - (iii) Short-term. Employees in short-term learning shall receive their regular salary.
 - (iv) After work hours. An employee in after work hours education or learning is not eligible for additional salary payment.
 - (d) Distribution of salary. The Appointing Authority is responsible for payment of the employee's reimbursement for salary. Distribution is contingent upon completion of the learning and development program and must be documented by the attended institution.
- (4) Employment status during full-time continuing education, learning and development.

- (a) Leave Status. An employee engaged in authorized full-time continuing education, learning and development is on educational leave during the period approved by the Appointing Authority. The Appointing Authority must approve any extension of this leave. An employee will not accrue sick and annual leave during this period.
 - (b) Salary Increases and Adjustments. If eligible, an employee in full-time continuing education, learning and development will continue to receive any salary increases or adjustments.
 - (c) Continuous Service. Full-time continuing education, learning and development will not interrupt continuous service for purposes of longevity.
 - (d) Payroll Deductions. All prior authorized deductions will continue during full-time continuing education, learning and development provided the adjusted salary covers the deductions.
 - (e) State Contributions. Contributions from the State to the employee's insurance premiums and retirement account will continue.
- (5) Employee's responsibilities.
- (a) An employee in full-time continuing education, learning and development must contractually agree to work for the agency for twelve (12) months or twice the total educational leave, whichever is greater. If the employee fails to fulfill the contract, the employee must reimburse the State for expenses incurred during the full-time continuing education, learning and development, including salaries and wages paid by the State. Neither sick nor terminal leave can be used to reduce the reimbursement period.
 - (b) An employee in continuing education, learning and development will be held to the same attendance and performance standards as other work assignments. An employee must reimburse the State for all costs, including salary, resulting from unexcused absences and incompleteness of a learning and development program. Collection of reimbursement is the responsibility of the agency.
 - (c) If an activity in continuing education, learning and development is terminated prior to completion, either at the convenience of the State or because of death, prolonged illness, disability, or similar conditions beyond the control of the employee, neither the employee nor the employee's estate may be responsible for reimbursement of expenses.
 - (d) If an employee is discharged for any cause from the State or the educational institution, relief of financial obligation is not automatic.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.06. CONTINUING EDUCATION UNITS. The Department may grant Continuing Education Units (CEUs) for continuing education, learning and development which meets national standards. One (1) CEU unit shall be granted for each ten (10) hours of instruction. Agencies must apply to the Commissioner for approval of CEU credit for courses not offered by the Department.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.07. CERTIFICATION. The Department shall approve certification as established by law and as determined by the Department.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.08. EXCLUSIONS. Attendance at conferences, symposiums, conventions, official meetings, and expositions provided by profession-based organizations or associations does not require approval by the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

RULES
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Chapter 1120-09
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1120-09-.01 TENNESSEE EMPLOYEES' CHARITABLE CAMPAIGN. The Tennessee Employees Charitable Campaign will be coordinated annually by the Department. The Governor and the Commissioner will be designated as chair and co-chair respectively.

Employees may contribute through payroll deduction to social services and health agencies authorized by the Commissioner. Procedures and methods for deductions of monies are at the discretion of the Governor, the Commissioner and the Commissioner of Finance and Administration.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-09-.02 SICK LEAVE BANK. The Department will administer a bank which grants paid sick leave to qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all their personal sick, compensatory, and annual leave balances.

Authority: T.C.A. §§ 8-50-901 through 8-50-910.

1120-09-.03 EMPLOYEE SERVICE AWARDS.

- (1) The Department will provide a consistent and uniform system through which employees will receive appropriate recognition for their service to state government. Each participating agency will verify eligible employees' length of service and submit a request for awards to the appropriate vender.
- (2) Service award credit will be given for the same periods of employment in state government as are recognized by the Tennessee Consolidated Retirement System for retirement credit, excluding any service credit recognized by the Tennessee Consolidated Retirement System for service in local governments or the public school systems other than State owned and operated schools.
- (3) Service awards will be presented following five (5) years of creditable service and at each increment of five (5) years thereafter.
- (4) Awards provided by the Department will be at the discretion of the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-09-.04 EMPLOYEE SUGGESTION AWARD PROGRAM. The Department will administer the Employee Suggestion Award Program in accordance with T.C.A. § 4-27-101 et seq.

Authority: T.C.A. §§ 4-27-101 through 4-27-105, T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

RULES
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CHAPTER 1120-10
DISCIPLINARY ACTION
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1120-10-.01	Discipline
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1120-10-.01 DISCIPLINE. The supervisor is responsible for maintaining the proper job performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the step appropriate to the infraction, conduct, or performance, as determined by the supervisor.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.02 CAUSES FOR DISCIPLINARY ACTION. Causes for disciplinary action fall into two categories:

- (1) causes relating to performance of duties; or
- (2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.03 EXAMPLES OF DISCIPLINARY OFFENSES. The following are examples of acts that may warrant disciplinary action. This list is not all-inclusive and shall not limit an Appointing Authority's discretion in disciplinary matters:

- (1) Inefficiency in the performance of duties;
- (2) Incompetency in the performance of duties;
- (3) Negligence in the performance of duties;
- (4) Misconduct involving public officials and employees pursuant to T.C.A., Title 39, Chapter 16, Part 4;
- (5) Careless, negligent, or improper use of state property or equipment;
- (6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
- (7) Habitual improper use of sick leave;
- (8) Habitual pattern of failure to report for duty at the assigned time and place;
- (9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (10) Gross misconduct;
- (11) Conduct unbecoming an employee in state service;
- (12) Conviction of a felony;
- (13) Willful abuse or misappropriation of state funds, property or equipment;

- (14) Falsification of an official document relating to or affecting employment;
- (15) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the state service or that would interfere with the ability of management to manage;
- (16) Trespassing on the property of any state officer or employee for the purpose of harassment;
- (17) Damage or destruction of state property;
- (18) Acts that would endanger the lives and property of others;
- (19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;
- (20) Brutality in the performance of duties;
- (21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);
- (22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;
- (23) Sleeping or failure to remain alert during duty hours;
- (24) Unauthorized disclosure of confidential information;
- (25) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and
- (26) For the good of the service as outlined in T.C.A. § 8-30-316.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.04 TYPES OF DISCIPLINARY ACTIONS. Corrective actions may include the following:

(1) Oral Warning.

(a) The supervisor will meet with the employee to:

- (1) Review with the employee the performance and/or conduct expectations and the reasons for those expectations.
- (2) Explain to the employee how an expectation has not been met and detail how the present performance or conduct is unacceptable.
- (3) Allow the employee to give reasons for such inappropriate actions or failures.
- (4) Make suggestions for correction.
- (5) Provide the employee with written follow-up documenting the date of the discussion and other necessary information regarding expectations for improvement.

(b) Written follow-up to an oral warning should not be construed as a written warning as described below and shall not be maintained as part of the employee's official human resources file.

(2) Written Warning.

(a) The supervisor will meet with the employee and:

- (1) Review the points covered in the oral warning, if an oral warning was issued.

- (2) Review with the employee the performance and/or conduct expectations and the reasons for those expectations.
 - (3) Explain to the employee how job requirements have not been met and detail how the present performance or conduct is unacceptable.
 - (4) Allow the employee to give reasons for such inappropriate actions or failures.
 - (5) Make suggestions for correction.
 - (6) Indicate that failure to improve will lead to further disciplinary action.
 - (7) Tell the employee the discussion will be documented in a letter which shall cover the significant points of the discussion.
- (b) A copy of the written warning shall be placed in the employee's human resources file. After a period of two (2) years, an employee may submit a written application to expunge the written warning from the employee's file. Such application will be granted provided that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and/or discipline.
 - (c) Request for Review of a Written Warning. A preferred employee who wishes to contest a written warning may request a review of that warning by the agency. The employee must submit a written request for review to the Appointing Authority no later than fourteen (14) days from receipt of the written warning. The request for review should include documentation of any mitigating circumstances causing the employee to believe that the warning is undeserved. The Appointing Authority will provide a written decision to the employee within fifteen (15) workdays of receipt of request for review. The Appointing Authority's written decision is final.

(3) Suspension Without Pay.

- (a) An Appointing Authority may suspend without pay an employee, for disciplinary purposes, for such length of time as the authority considers appropriate, not exceeding thirty (30) days in any twelve-month period. With the approval of the Commissioner, an employee may be suspended for a longer period pending the appeal or the processing of an appeal in accordance with this chapter.
- (b) Any employee who is suspended shall receive a written notice from the Appointing Authority that will contain the following:
 - (1) an account of the circumstances which led to the decision to issue the suspension;
 - (2) the beginning and ending dates of the suspension; and
 - (3) information to the employee concerning the appeal process as outlined in these Rules. A copy of the notice will be placed in the employee's human resources file.
- (c) The ability to appeal for suspensions of less than three (3) days is limited to the Commissioner under Step II of the appeal process. An employee shall not be entitled to appeal a suspension of less than three (3) days to the board of appeals.

(4) Dismissal.

- (a) An Appointing Authority may dismiss any employee for unacceptable performance or conduct.
- (b) The Appointing Authority shall submit written notice to the employee and copy the Department at the time a preferred employee is dismissed. The notice shall specify the circumstances leading to the decision to dismiss and inform the employee of any appeal process. The notice shall become part of the employee's human resource's file.

The date of this notification shall serve as the beginning date for the appeal period. An employee shall continue to receive compensation for ten (10) days following the date of notification, but is not required

to report to work during this period. The employee's accumulated annual leave balance may be used during this period only if dismissal was for gross misconduct.

- (c) When the dismissal is for gross misconduct, the written notice must describe the job related misconduct and provide applicable section(s) of Tennessee Code Annotated under which the employee may be criminally prosecuted.

- (5) Transfer or Demotion. If the Appointing Authority determines that a preferred employee's ability to satisfactorily perform the required duties of the position is beyond the capabilities of the employee or the employee has been compromised by conduct that renders the employee ineffective, the Appointing Authority may choose to demote or transfer the preferred employee to another position.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.05 Repealed.

1120-10-.06 Repealed.

1120-10-.07 Repealed.

1120-10-.08 Repealed.

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN RESOURCES
CHAPTER 1120-11
APPEALS
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1120-11-.09	Repealed

1120-11-.01 APPEAL.

- (1) A preferred service employee who is dismissed, demoted or suspended may file an appeal concerning the application of a law, rule, or policy to the employment action.
- (2) An executive service employee does not have standing to file an appeal under this section.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.02 RESPONSIBILITY.

- (1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.
- (2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies and are responsible for ensuring that all employees and supervisory staff are aware of the provisions of this chapter.
- (3) The Appointing Authority shall notify an employee of the appeal process, and relevant time limits.

T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.03 BASIC STANDARDS.

- (1) An employee who files a complaint under this chapter must file the complaint no later than fourteen (14) calendar days after the date the employee receives written notice of a dismissal, demotion, or suspension. If an employee fails to file the complaint within the fourteen-day period, the ability to appeal as defined in this chapter lapses and is deemed to have been waived in its entirety by the employee.
- (2) A complaint is considered as filed when the Appointing Authority, the Commissioner or the Board, depending on whether the complaint is being made under Step I, II or III as provided in Chapter 1120-11-4, receives a written or electronic copy of the complaint.
- (3) If the term of the suspension is less than three (3) days, the ability to appeal is limited to an appeal to the Commissioner under Step II as provided in this chapter. An employee shall not be able to appeal a suspension of less than three (3) days to the Board.
- (4) A complaint filed under this section must identify the following:
 - (a) the employment action taken against the employee;
 - (b) the specific law, rule, or policy that was allegedly violated; and

- (c) the corrective action sought by the employee.
- (5) A complainant and the agency may be represented at any step of the appeal procedure. The presence of any observer is at the discretion of the individual in charge of the discussion or hearing.
- (6) Appeal discussions held during the scheduled off duty hours for a complainant, witness, or representative will be considered the same as hours worked, including overtime if applicable. Employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.
- (7) All decisions rendered in accordance with this section shall be in writing and communicated as outlined herein. Written communication shall be considered delivered upon actual receipt as indicated by signature if hand delivered or no later than three (3) days after the date of notice if delivered in any manner other than hand delivery.
- (8) When awarding back pay for a dismissal, the award shall be offset by income earned from alternative employment if earned during the employee's normal state working hours when employed by the state. Additionally, awards of back pay may be offset by unemployment insurance payments received.

T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.04 PROCEDURAL STEPS IN APPEAL. There shall be no more than three (3) steps in the appeal process as follows:

(1) Step I – Appointing Authority Level

- (a) The employee submits a written complaint to the Appointing Authority within fourteen (14) days after the date the employee receives written notice of a dismissal, demotion, or suspension. The written complaint must identify the specific law, rule, or policy that was allegedly violated along with any relevant documentation.
- (b) The Appointing Authority or designee shall conduct any investigation considered necessary, meet with the complainant in person, and issue a decision, in writing, not later than fifteen (15) days after the date the Appointing Authority receives the complaint.
- (c) The Appointing Authority shall have full authority to overturn, reduce, or amend the disciplinary action based on information gathered at the Step I hearing, including reinstatement of leave and awards of back pay, if appropriate.
- (d) If the Appointing Authority does not issue a decision fifteen (15) days after the Appointing Authority receives the complaint, the complainant may appeal to the Commissioner by filing the complaint in accordance with Step II.

(2) Step II – Commissioner of the Department of Human Resources

- (a) If the Appointing Authority does not find in favor of the employee, the employee may appeal to the Commissioner by submitting a written complaint and all relevant documentation no later than fourteen (14) days after receipt of the Appointing Authority's written decision to:

Commissioner
Tennessee Department of Human Resources
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

- (b) The written complaint must identify the specific law, rule, or policy that was allegedly violated and include a copy of the Appointing Authority's Step I decision.
- (c) The Commissioner or designee shall review the complaint, any relevant submitted documentation, and the Appointing Authority's decision. The Commissioner shall issue a decision, in writing, not later than thirty (30) days after the date the complaint was filed with the Commissioner. The Commissioner shall have full

authority to overturn, reduce, or amend the disciplinary action based on the information submitted for consideration, including reinstatement of leave and awards of back pay, if appropriate.

- (d) If the Commissioner does not issue a decision within thirty (30) days after the Commissioner receives the complaint, the complainant may appeal to the Board in accordance with Step III.

(3) Step III – Board of Appeals

- (a) The complainant or state agency may appeal in writing to the Board within fourteen (14) days after the action taken by the Commissioner of the Department of Human Resources. The written complaint must be submitted stating the specific law, rule or policy allegedly violated, along with all relevant documentation and the Step II decision to:

Board of Appeals
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

- (b) Within ten (10) days after the receipt of the appeal, the Administrative Law Judge (ALJ) assigned to assist the Board shall determine whether all previous procedural requirements were completed properly and in a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the procedural requirements have been met, the Board shall conduct proceedings in accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the law, rule, or policy specified in the complaint was violated.
- (c) Each hearing under this chapter shall occur before a panel of at least three (3) members of the Board, assisted by one (1) ALJ. The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising members of the Board on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. An ALJ, upon timely motion, may decide any procedural question of law.

At no time shall the ALJ take part in the determination of a question of fact. However, the Board may request an ALJ to hear the facts of the case and issue a recommendation to the Board. The Board shall convene as described herein to make a determination of the question of fact based upon the recommendation of the ALJ.

- (d) The Board shall issue its final decision in each proceeding no later than one hundred twenty (120) days after the date of the filing of the appeal with the Board.
- (4) In order to ensure that the Board issues its final decision no later than one hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the Board:
- (a) The parties shall participate in a pre-hearing conference no later than twenty (20) days after the filing of the appeal. At the pre-hearing conference, a date must be set on which the hearing before the Board will be held.
 - (b) All discovery must be completed no later than sixty (60) days after the filing of the appeal.
 - (c) All motions, both dispositive and non-dispositive, must be ruled on no later than thirty (30) days before the date of the hearing.
 - (d) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one hundred twenty (120) day time period for the Board to issue its decision.
 - (e) Neither party shall be entitled to a petition for reconsideration under T.C.A. § 4-5-317.
- (5) The Board shall serve as the final administrative step in the appeals procedure for preferred service employees. Decisions of the Board are subject to judicial review in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5.

- (6) The Board may award attorney's fees and costs to a successfully appealing employee. The Commissioner shall establish by rule the manner in which those fees shall be determined. The unsuccessful party or other state agency shall pay any fees or costs awarded under this subsection.
- (7) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The Commissioner may grant exceptions on a case-by-case basis.
- (8) In any case in which a successful complainant has been awarded reinstatement, back pay or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the final order within which to provide reinstatement, back pay and/or attorney's fees.

Authority: T.C.A. § 4-5-301 et seq., T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.05 ATTORNEY FEES. The Board of Appeals may, at its discretion, award reasonable fees and costs upon successful appeal to an employee's attorney in accordance with the following terms and conditions.

- (1) Attorney's fees awarded by the Board shall be awarded at the same rates established by Guidelines for the Defense of Individual Employees issued by the State of Tennessee Office of the Attorney General and Reporter.
- (2) All awards of costs shall be limited to reasonable costs actually incurred. Awards of costs for travel shall be subject to the provisions of the comprehensive travel regulations in effect at the time the claim is made.
- (3) If the Board awards attorney fees, the prevailing attorney shall submit an affidavit detailing the hours of preparation, in hours and tenths of hours, the nature of services performed during such preparation, the hours of hearing time, and a complete itemized statement of costs claimed. Claims shall be submitted to the following address:

Board of Appeals
c/o Tennessee Department of Human Resources
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

- (4) In no event shall a claim be paid which is not received by the Board of Appeals within thirty (30) days of the effective date of the final order.
- (5) A designee for the Board shall review all such claims for compliance with these Rules, the law, and the Board's decision. The designee is authorized to approve payment of such claims for any amount up to and including the amount claimed.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.06 Repealed.

1120-11-.07 Repealed.

1120-11-.08 Repealed.

1120-11-.09 Repealed.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-12
COMPUTATION OF TIME

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1120-12-.01 Computation of Time

1120-12-.01 COMPUTATION OF TIME. In computing any period of time prescribed or allowed by this chapter, the date of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined in §15-1-101, or, when the act to be done is the filing of a paper, a day on which the office where the paper to be filed is closed or on which weather or other conditions have made the office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-407.

RULES

OF THE TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-13 ACCESS TO PUBLIC RECORDS

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1120-13-.02 Payment of Production Costs	1120-13-.04 Reduction of Fees

1120-13-.01 PRODUCTION COSTS.

Upon request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501, et seq., the Department shall charge the requesting party a reasonable charge for production costs, including labor, duplication and delivery, based on the most current Schedule of Reasonable Charges issued by the Office of Open Records Counsel, available at <http://tennessee.gov/comptroller/openrecords>.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-501, et seq.

1120-13-.02 PAYMENT OF PRODUCTION COSTS. The Department shall provide the requesting party an estimate of the production costs, including labor, duplication and delivery, before the initial production of the requested documents. The Department shall require the requesting party to provide full payment of the production costs before copies of the requested records are delivered or otherwise made available.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-501, et seq.

1120-13-.03 WAIVER OF PRODUCTION COSTS.

- (1) The Department shall waive production cost if the total production cost, including labor, duplication and delivery, is less than ten dollars (\$10).
- (2) When the requesting party is a federal, state or local government agency, the Department shall provide the requested copies of public records without charge. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by a citizen and charged accordingly.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-501, et seq.

1120-13-.04 REDUCTION OF FEES. The Commissioner may reduce any part of the fees calculated under these rules upon a determination that such reduction is in the best interest of the public.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-501, et seq.

RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-14
TENNESSEE EMPLOYEE MEDIATION PROGRAM

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1120-14-.01 STATEMENT OF POLICY.

- (1) It is the policy of the State of Tennessee to encourage the use of mediation as a valuable tool for all state employees to resolve workplace issues. Mediation is a process whereby the parties themselves, with the assistance of a third party neutral, seek to develop and agree upon solutions to issues in the workplace. The primary purpose of the Tennessee Employee Mediation Program ("the program") is to provide a responsive, informal, confidential, and effective means of resolving human resource issues as an alternative to administrative proceedings.
- (2) Mediation is designed to supplement and not to limit or replace the appeal procedures detailed in the Act. Mediation may not be used to circumvent state or departmental policies.
- (3) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementation and administration of this program. Appointing authorities are responsible for proper implementation of this program throughout their respective agencies and for ensuring that all employees are aware of the provisions of this program.

1120-14-.02 COVERAGE.

- (1) Access to Mediation. Access to mediation services under this rule is available to any employee in the state service. Access to mediation services under this rule shall not be available to those employees excepted under the terms of T.C.A. § 8-30-102(b).
- (2) Definition of Workplace Issues. For purposes of this Rule, "workplace issues" shall include the following:
 - (a) Disciplinary action taken against an employee involving suspensions, demotions, and terminations.
 - (b) Any employment action that the employee believes is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401.
 - (c) Workplace harassment and discrimination as defined by the Department.
 - (d) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
 - (e) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the "Little Hatch Act");
 - (f) Other workplace issues involving relational, communication, or values conflict in state government employment.
- (3) Matters not eligible for Mediation. The following actions are not considered matters eligible for mediation:
 - (a) Actions that affect an employee serving an initial probationary period;
 - (b) Normal supervisory counseling and management;

- (c) Non-selection for promotion when the appointment was in compliance with these Rules and the Act;
 - (d) Oral and written reprimands;
 - (e) Actions resulting from reductions in force when the actions by the Appointing Authority were in compliance with statutes and rules;
 - (f) Shift, post, and overtime assignments;
 - (g) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
 - (h) Salary range assigned to classifications;
 - (i) Administration of salary increases established and funded by the legislature;
 - (j) Classification of position;
 - (k) Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;
 - (l) Agency rules or policies; and
 - (m) Any other matter over which an Appointing Authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.
- (4) No Grounds for Complaint. Nothing contained in this rule shall be construed to create or provide any substantive or procedural right or interest in state government employment, and the denial of access to mediation services shall not constitute any grounds for complaint or appeal.
- (5) Voluntary Participation. Participation in mediation shall be voluntary and conducted only by agreement of the parties. Employees who participate in or opt out of mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-14-.03 PROCESS AND PROCEDURE.

- (1) To commence the mediation process, an employee must file a request to the Department on a form prescribed by the Commissioner. The Appointing Authority and the employee will be notified of the request to mediate. Upon agreement by both parties, the Department shall refer the matter to an approved mediator.
- (2) The Appointing Authority, or his or her designee with sufficient authority, shall attend the mediation to reach an agreement and implement any final mediation agreement on behalf of the involved agency.
- (3) Upon convening the mediation, the parties shall execute an agreement to mediate, which form shall be approved by the Commissioner and shall become part of the mediation file. Either party or the mediator may voluntarily withdraw from the mediation at any time, or at any stage in the process.
- (4) Any party may have a representative present during the mediation. Any representative present at the mediation shall be required to sign the agreement to mediate and be bound by its terms. However, as mediation is not an adversarial proceeding, the role of any representative shall be limited to that of an advisor and observer, and not as an advocate on behalf of either party. The mediator shall maintain the authority to restrict the activities of any representative and shall have the discretion to terminate the mediation.
- (5) Audiotape, videotape, or other automated or electronic recordings of the mediation shall not be permitted.
- (6) Any mediated settlement agreement must be approved by the parties' Appointing Authority. Copies of the mediation settlement agreement shall be provided to the involved parties, their Appointing Authority, and the Department. The mediation settlement agreement shall not become part of any involved party's personnel file. Any mediated settlement agreement will not be considered confidential pursuant to T.C.A. 10-7-503. If the workplace issue involves an appeal filed pursuant to T.C.A. § 8-30-318, any mediated settlement agreement

shall be forwarded to the Board of Appeals. Any mediated settlement agreement shall not be contrary to the laws, rules, regulations or policies of the State of Tennessee or federal law, or exceed the Appointing Authority's legal authority.

- (7) Neither a request for, nor participation in mediation shall preclude an Appointing Authority from taking independent disciplinary action as needed in dealing with an employee's job performance or conduct.
- (8) Participation in mediation shall not require the use of accrued leave if the participating employee has obtained the prior approval of his/her supervisor or Appointing Authority.
- (9) Neither a request for, nor participation in mediation shall affect the time periods for filing complaints or appeals pursuant to T.C.A. § 8-30-318.
- (10) By submitting a request for mediation and participating in the mediation process, participants agree not to subpoena the mediator or his/her records or notes pertaining to the mediation in any court or administrative proceedings, unless the proceeding concerns alleged misconduct by the mediator or enforcement of the mediated settlement agreement.
- (11) While serving as a mediator, the mediator is not acting in a supervisory or managerial capacity for the State of Tennessee or his/her Appointing Authority.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-14-.04 TRAINING AND CERTIFICATION.

- (1) The Department shall maintain a list of mediators approved to conduct mediations under this program.
- (2) An individual desiring to be listed on the panel of approved mediators must have satisfactorily completed general civil mediation training which has been approved by the Alternative Dispute Resolution ("ADR") Commission of the Tennessee Supreme Court, or otherwise satisfy the requirements for listing as a mediator pursuant to the rules of the ADR Commission; and further receive the approval and recommendation for listing on the panel of mediators from the individual's Appointing Authority. The Department shall designate the necessary continuing education program for panel mediators. Final approval for listing or removal from the panel will be determined by the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: April 30, 2012

Signature: Danielle Barnes

Name of Officer: Danielle Whitworth Barnes

Title of Officer: Assistant Commissioner and General Counsel



Subscribed and sworn to before me on: April 30, 2012

Notary Public Signature: [Signature]

My commission expires on: March 9, 2013

Department of State Use Only

Filed with the Department of State on: 04/30/2012

[Signature]

Tre Hargett
Secretary of State

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